

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3016 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SUBHMANGAL EARTH PVT. LTD.

Versus

ELEFUR INDUSTRIES (INDIA) PVT. LTD.

Appearance:

MR AJ SHASTRI for the Petitioner.
MR MM TIRMIZI for the Respondents.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 19/07/2004

ORAL JUDGEMENT

Rule. Learned counsel appearing for the respondent waives notice of Rule. At the request of the parties, this petition is taken up for final hearing.

The petitioner has preferred this petition under Article 227 of the Constitution of India, whereby the petitioner challenges the order dated 29th November, 2003 below exh. 29 in Special Summary suit no. 297 of 2002 passed by the learned Civil Judge (S.D.), Vadodara.

2. The learned counsel appearing for the petitioner mainly submitted that summary suit has been filed by the petitioner because of dishonour of more than 29 cheques approximately worth Rs 53 lacs. Special Summary suit was filed by the petitioner bearing Special Summary suit no. 297 of 2002 because of dishonour of aforesaid more than 25 cheques issued by the respondents (original defendants). The goods were supplied by the petitioner and the amount of consideration was to be paid. Cheques were issued by the respondents and were dishonoured.

3. The learned counsel for the petitioner further submitted that summary suit was filed because of dishonour of cheques and therefore, no question of interpretation of any agreement whatsoever arises at all as alleged by the respondents. An application exh. 17 in the said Special Summary suit no. 297 of 2002 was given by the respondents (original defendants) for sending the matter to an arbitrator as the agreements between the parties were to the effect that if there is any dispute as to the agreement, the matter should be referred to an arbitrator. Thereafter, an application exh. 29 was once again given by the respondents (original defendants) so as to decide application exh. 17 first in point of time by the learned trial Judge and the learned Trial Judge has passed the order below application exh. 29 to the effect that the application exh. 17 should be proceeded first. It is also emphasised by the learned counsel for the petitioner that the dispute for which the summary suit was filed was not arising out of the terms of the agreement, but was filed due to dishonour of cheques for which hardly one has to read any clause of the agreement. Irrespective of the terms of the agreement, summary suit is triable because of dishonour of cheques. Dishonour of cheques has nothing to do with the agreement and therefore, no question whatsoever arises for referring the matter to the arbitrator. Therefore, the impugned order passed below exh. 29 by the learned Civil Judge(S.D.), Vadodara in Special Summary Civil Suit no. 297 of 2002 deserves to be quashed and set aside.

4. The learned counsel for the respondents mainly submitted that there was an agreement between the

parties i.e original plaintiff and original defendant and in pursuance of that agreement, cheques were issued and therefore, whenever there is a dishonour of cheques, the terms of the agreement should be read first. Thereafter only, the fact as to dishonour of cheques can be adjudicated upon by the trial court. The main thrust of the argument canvassed by the learned counsel for the respondents is that without reading the agreement entered into between the parties, summary suit cannot be proceeded with and if the agreement is read, then, it refers to an arbitration clause and therefore, instead of trying the dispute under summary suit, the whole matter should be relegated to an arbitrator and therefore, the order dated 29th November, 2003 below exh. 29 in Special Summary suit no. 297 of 2002 passed by the trial court is just, proper and equitable.

5. Upon hearing the learned counsel appearing for both sides and upon perusal of the orders passed by the court below which are annexed to the memo of the petition, including the order passed by this Court, I am of the opinion that the order dated 29th November, 2003 below exh. 29 in Special Summary suit no. 297 of 2002 passed by the learned Civil Judge (S.D.), Vadodara is erroneous and prima facie, an error has been committed by the learned trial Judge in holding that the summary suit filed by the petitioner (original plaintiff) is never based upon any agreement, much less an agreement for which constantly, the defendants are in search of original copy, vide application exh. 24. Looking to the said agreement, which is produced before this Court at page 68 of the memo of the petition and upon careful consideration of the same, the summary suit can be proceeded with further. The basis of summary suit is never the agreement, but always due to dishonour of cheques. Once the cheques are signed and dishonoured by the bank, it always becomes the basis of dispute in a summary suit and this is what is envisaged by Order XXXVII of Civil Procedure Code. For accurate reading the cause of action in the summary suit, the fact that the cheques are dishonoured is sufficient. But if the very agreement is in dispute, if there is a total denial by the original defendant as to the facts stated in the agreement, then only the matter should be referred to an arbitrator. But so long as there is a dishonour of cheques and only the amount is demanded on the basis of those dishonoured cheques, there is no need to refer the matter to an arbitrator because the dispute has never arisen from the agreement. The agreement reveals one fact, whereas dishonour of cheques reveals another fact. The bone of contention in the summary suit is dishonour

of as many 25 cheques worth Rs. 53 lacs. Therefore, the impugned order passed by the court below is patently illegal and erroneous and is not tenable at law and it deserves to be quashed and set aside.

6. In the result, this petition is allowed.

The order dated 29th November, 2003 below application exh. 29 in Summary suit no. 297 of 2002 passed by the learned Civil Judge (S.D.), Vadodara is hereby quashed and set aside. The trial Court is directed to dispose of Summary suit no. 297 of 2002 as early as possible and practicable and preferably within a period of three months from the date of receipt of writ from this Court. Rule made absolute accordingly with no order as to costs. Direct service permitted.

(D.N.Patel, J)

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